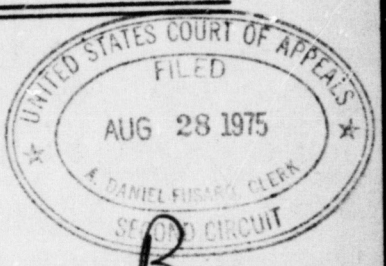
United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

75-2048

to be argued by
PATRICK F. BRODERICK



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P/S

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket 75 - 2048

THE UNITED STATES OF AMERICA,

Appellee,

- vs -

RICHARD MARI,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF NEW YORK

BRIEF and APPENDIX FOR RICHARD MARI

For the Appellee:

DAVID G. TRAGER, ESQ.,
United States Attorney
Eastern District of
New York

For Defendant-Appellant:

PATRICK F. BRODERICK, ESQ.,
38-08 Bell Boulevard
Bayside, New York 11361

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PRELIMINARY STATEMENT

RICHARD MARI appeals from a denial of his writ of habeas corpus entered on November 22, 1974 in the United States District Court for the Eastern District of New York, following a conviction after a plea of guilty, before the Honorable John Bartels, United States District Judge.

Indictment 73 CR 775 was filed on August 22, 1973 in seven counts against Richard Mari and one other, William James MacQueen. On January 25, 1974, Mari pleaded guilty to Count 2 of the indictment charging him with an extortionate extention of credit in violation of Title 18 United States Code 892. On April 5, 1974 Judge Bartels sentenced Mari to a term of imprisonment for four months and probation for a period of two years eight months. The petitioner served the four months. On November 6, 1974, Judge Bartels signed an Order to Show Cause for a writ of habeas corpus based on the petitioner Mari's claim that the conviction of April 5, 1974 should be vacated because Mari's plea of guilty was induced by the same counsel representing both Mari and MacQueen. The petition for habeas corpus was denied by Judge Bartels after a hearing on November 22, 1974.

F A C T S

The attorney for Mari was the same attorney for the co-defendant MacQueen. (A-12)

During the pendency of this case, Mari was indicted by a New York County Grand Jury for an offense with a maximum sentence of six years to life. (H. 11/22/75 p. 24, 26)

Mari at all times was under the impression that he was going to trial in this action. (Ibid., p. 27)

The indictment charged the defendants in sum and substance with Mari loaning money to a Joseph Freno and then using threats of violence to recover the money. (A. Ind.)

Mari was the one who loaned the money and MacQueen was the one who threatened Freno, as alleged in the indictment.

Both defendants were represented by the same attorney. When questioned about the possible conflict of interest the attorney stated,

> "If they both went to trial, I could not say that Mr. MacQueen would take the same exact position as he's taking before the Court today."
>
> H. 1/18/74 , p. 5

Mari at all times believed he was going to trial on this case. (H. 11/22/74, p. 22).

The Court at the hearing precluded petitioner from stating that on November 8, 1973 during the pendency of this prosecution, he was indicted in the State Court for an offense that required him to serve a life sentence if convicted. (H. 11/22/74 ,p26-27).

On January 25, 1975, while the Court was questioning Mari about his plea of guilty, the following took place:

"THE COURT: Did you threaten him with violence?

DEFENDANT MACQUEEN: I did, your Honor.

DEFENDANT MARI: I spoke to him about the money a few times. He told me he was getting it, but he never gave me the money and his father threatened me if I bothered him for the money.

He said he knew the biggest people in the Mafia. "

Plea, 1/25/74, p. 7

Then during the plea of MacQueen a few minutes later, MacQueen stated to the Court this exoneration of Mari:

"DEFENDANT MACQUEEN: Yes, I did.

I would like to explain ---

MR. SALAWAY: Judge ---

THE COURT: Let him explain.

MR. SALAWAY: I just want to know if he is okay.

DEFENDANT MACQUEEN: I'm all right.

I know Mr. Mari since he is a kid.

He wouldn't be in this trouble if it wasn't for me.

Now, he came to me and he told me about

this fellow ---

THE COURT: Did you know Freno?

DEFENDANT MACQUEEN: At the time, I didn't. He told me he owed him x amount of dollars.

THE COURT: Didn't he tell you the full amount?

DEFENDANT MACQUEEN: No, -- yes, he did.

THE COURT: One thousand fifty dollars?

DEFENDANT MACQUEEN: And he told me Freno's father threatened to break his legs and everything else.

Now, I know him since he was a little boy. He went to school with my oldest son, and he came to me for help and I said ' You tell his father you no longer have anything to do with the money, and let him break my legs.'

It had nothing to do with Richard Mari. The whole thing was my idea from the beginning. I made all the talks on the phone. It was all for me. I did all threatening.

THE COURT: By the way, did Mr. Freno ever pay?

DEFENDANT MACQUEEN: No.

I made all the threats. He just introduced me to Freno.

THE COURT: But Mr. Mari just told me he was guilty of the threats.

DEFENDANT MacQUEEN: Well, through me. I told him what to say. I said, "Just tell Mr. Freno or his son" --

THE COURT: Both or either of you threatened to use violence against Freno?

DEFENDANT MacQUEEN: Me.

THE COURT: How about him?

DEFENDANT MacQUEEN: No -- well, I told him to say it but he never did it himself."

Plea, 1/25/74 p. 15, 16

On that date of sentencing, while the attorney was talking about the charges as against Mari, the defendant MacQueens attempted to interrupt but was silenced by the Court and their mutual attorney. (Sent. 4/5/74 p. 10).

H E A R I N G

Richard Mari testified that after he was arrested he and MacQueens had a conference with their attorney (H. p. 17). At this conference, MacQueen told the attorney that Mari had nothing to do with the case (17, 28). He never hired MacQueens to beat up anybody. (19). The attorney told Mari that if he represented both of them he would have full control of the case (17). Both MacQueen and Mari paid the attorney (24.)

The attorney never mentioned to consequences of his plea of guilty in the federal case as to the effect on the New York drug case (24). The attorney never mentioned the right to a separate

trial or that he could possibly call MacQueens for his defense (24, 25).

Whenever he spoke with their attorney MacQueen was always present (26).

At the time of the plea of guilty, he did not understand the terminology of the Court (18).

KENNETH SALAWAY, called as a witness and questioned by the Court, testified that he was an attorney admitted to practice since 1964 and was experienced in criminal matters (30, 31). Salaway told the Court how he had many conversations with Mari about the case; that he had received transcripts for the United States attorney and that at all times Mari and MacQueens admitted their guilt. (32, 33). Based on this discovery, he recommended a plea of guilty for both of them (33).

If the matter had gone to trial, Mr. Salaway admitted he would not have represented both (34, 35).

Mari received a sentence of three years while MacQueen received a suspended sentence (H. P. 20.)

SUMMARY OF ARGUMENT

The representation of the defendant by the same attorney as the co-defendant deprived him of a proper assistance of counsel.

P O I N T O N E

The Minutes at the Time of the Pleas of Guilty Clearly Show That MacQueen's Profession of Guilt Was Exculpatory of Mari Thereby Requiring the Assistance of Separate Counsel

The American Bar Association standards provide as follows:

"Conflict of Interest.

(b). Except for preliminary matters such as initial hearings or applications for bail, a lawyer or lawyers who are associated in practice should not undertake to defend more than one defendant in the same criminal case if the duty to one of the defendants may conflict with the duty to another. The potential for conflict of interest in representing multiple defendants is so grave that ordinarily a lawyer should decline to act for more than one of several co-defendants except in unusual situations when, after careful investigation, it is clear that no conflict is likely to develop and when the several defendants give an informed consent to such multiple representation."

American Bar Association
Standards 3.5(b)

The Commentary further provides as follows:

"b. Representation of Co-Defendants.

Beyond the obligation of disclosure, there are situations in which the lawyer's independent representation of his client is so inhibited by conflicting interests that even full disclosure and consent of the client may not be an adequate protection. ABA CODE DR 6-106. In criminal cases this most

frequently occurs where the lawyer undertakes the defense of more than one co-defendant. In many instances a given course of action may be advantageous to one of the defendants but not necessarily to the other. The prosecution may be inclined to accept a guilty plea from one of the co-defendants, either to a lesser offense or with a lesser penalty or other considerations; but this might harm the interests of the other defendant. The contrast in the dispositions of their cases may have a harmful impact on the remaining defendant; the one who pleads guilty might even, as part of the plea agreement, consent to testify against the co-defendant. Moreoever, the very fact of multiple representation maies it impossible to assure the accused that his statements to the lawyer are given in full confidence. Defense counsel necessarily must confront each with any conflicting statements made by the other in the course of planning the defense of the cases. In this situation, he may find that he must "judge" his clients to determine which is telling the truth, and his role as advocate would inevitably be undermined as to one if not both defendants.

The Supreme Court has recognized that in such circumstances the impact of the conflict of interest is so severe as to warrant the conclusion that the defendant has been denied due process of law. See Glasser v. United States, 315 U.S. 60, 75-76 (1942), in which the Court noted that "(i)rrespective of any conflict of interest the additional burden of

representing another party may conceivably impair counsel's effectiveness . . . The right to have the assistance of counsel is too fundamental and too absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial." See also Craig v. United States 217 F.2d 355 (6th Cir. 1955); People v. Douglas, 61 Cal. 2d 420 38 Cal.Reptr. 884, 392 P.2d 964 (1964). The weaker defense may often detract from the stronger, and a lawyer may find that to assert a point vigorously for one client operates to disparage the other or put him in a bad light. Such situations underscore the need for separate representation. Although there may be some situations where it will be mutually advantageous to the defendants to have a single lawyer represent them, the risk of an unforeseen and even unforeseeable conflict of interest developing is so great that a lawyer should decline multiple representation unless there is no other way in which adequate representation can be provided for both defendants."

Other cases showing conflict of interest where there exists a joint representation are:

United States -v- Loyano, 420 F2d 769, 773 (2nd Cir. 1970)

United States v. Vowteras No. 74-1412, 2nd Cir. 1974

United States v. DeBerry, 487 F2d 448 (2nd Cir. 1973)

One court has even stated that a presumption arises when one attorney represents more than one defendant. Ford v. United States (379 F2d 123).

The hearing clearly established that Mari admittedly did loan a Joseph Freno money but that he never did admit to the use of force or violence to secure a repayment of that loan. The use of threats and violence were exclusively MacQueen's deeds. (Plea, 1/25/75, pp. 15, 16).

The record clearly shows that MacQueen was always ready and willing to testify in exoneration of the defendant Mari. It was the attorney for both of them who made the decision that MacQueens' testimony would be harmful to Mari. Hearing, 11/22/75.

The prejudice here is made even more abundant where a plea of guilty by Mari had extremely detrimental repercussions upon the New York State case. Since Mari had pleaded guilty to "extortion" this effectively destroyed his opportunity to take the stand in his State case.

When one defendant totally exculpates another, the representation of both is incompatable and impossible.

P O I N T T W O

Mari Did Not Make an "Informed" Waiver of his Right to be Represented by his Own Attorney

The appellant is well aware that a plea of guilty in federal

criminal practice negates non-jurisdictional defects in the prior proceedings.

Gardner v. Wainright, 433 F2d 137 (5th Cir., 1970). But such a waiver must be an informed waiver, i.e., that the defendant actually knows what rights he is forfeiting. Glasser v. U. S., 315 US 60.

The situation is unique here because we are not referring to a waiver of a trial by jury or other rights examined of Mari by the Court but one of subjective analysis of the case against Mari by the attorney for Mari and MacQueen.

It was the attorney here who was advising the defendants whether a defense existed for then it was not an attorney viewing the case in the best light for just one of them.

Such impartial advice is demanded of our profession.

C O N C L U S I O N

It was improper for the same attorney to represent Mari who also represented the co-defendant MacQueens when MacQueen exculpated Mari.

Mari's never waived his right to a separate attorney because he was never fully apprised of the case against him by the attorney for both him and MacQueen.

Hon. David G. Trager, Esq.,
United States Attorney
Eastern District:New York

Respectfully Submitted,

PATRICK F. BRODERICK, ESQ.

A P P E N D I X

* * *

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - -

UNITED STATES OF AMERICA

vs.

RICHARD MARI, et al.,
Defendants.

- - - -

73 CR 775

74 CIV 1385

- - - -

NOTICE IS HEREBY GIVEN, that RICHARD MARI, defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment convicting him of a violation of Section 892 of Title 18 of the United States Code entered in this action on the 5th day of April, 1974, and from the writ of habeas corpus denied on November 22, 1974, and from each and every part thereof.

Dated: Bayside, New York
November 27, 1974

Yours, etc.

PATRICK F. BRODERICK, ESQ.
38-03 Bell Boulevard
Bayside, New York 11361
Telephone (212) 229-6070
Attorney for Richard Mari

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

740 15

UNITED STATES OF AMERICA

73 CR 775

- v. -

WILLIAM JAMES MAC QUEEN
RICHARD A. MARI,

Defendants.

ORDER TO SHOW CAUSE FOR WRIT OF HABEAS CORPUS

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
NOV 6 - 1974
TIME A.M.

Upon the annexed copy of a verified petition for an order in the nature of a writ of habeas corpus, pursuant to Title 28 U.S.C. Section 2255 and Rule 35, Federal Rules of Criminal Procedure, vacating the judgment of conviction in the within proceeding with respect to defendant RICHARD A. MARI,

It is hereby ORDERED that the respondent-plaintiff, the UNITED STATES OF AMERICA, through its attorney, show cause before a Judge of this Court at the United States Courthouse, No. 125 Cadman Plaza East, Brooklyn, New York, in Court Room No. 4, at 2:30 P.M., on November 22, 1974, or as soon thereafter as counsel may be heard, why an order should not be entered directing that a writ of habeas corpus be issued against the respondent-plaintiff vacating the judgment of conviction with respect to defendant RICHARD A. MARI in this proceeding; and for such further relief as the Court may deem proper; and

It is further ORDERED that a copy of this order together with the papers upon which it is granted be personally served upon the attorney for the respondent-plaintiff on or before 5 P.M., November 6, 1974, and that such service shall be deemed good and sufficient service.

Dated, Brooklyn, N.Y.
November 6, 1974

J. K. Bartels
U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA

-v. -

WILLIAM JAMES MAC QUEEN
RICHARD A. MARI,

Defendants.
- - - - - - - - - - - - - - - - - -x

73 CR 775

VERIFIED PETITION

The petition of RICHARD A. MARI respectfully shows that:

FIRST. On April 5, 1974, a judgment of conviction and commitment was made and entered in the above Court against your petitioner, convicting him of the offense of violating Title 18 U.S.C. § 892, in that your petitioner made an extortionate extension of credit to a certain debtor of a loan in the amount of $1,050, under an understanding between your petitioner and debtor that the loan would be repaid, and that delay and/or failure "could result in the use of violence * * *". Your petitioner was committed for a period of three years, pursuant to Title 18 U.S.C, § 3651, the sentence requiring confinement for a period of four months with the remainder suspended and your petitioner placed on probation for two years and eight months [EXHIBIT A (1) post].

SECOND. On April 15, 1974, your petitioner commenced the service of the sentence imposed [id.(2)] and completed the same.

THIRD. Your deponent respectfully advises the Court that the judgment of conviction and commitment was in flat violation of that provision of Amendment. VI., Constitution of the United States, guaranteeing the right "to have the Assistance of Counsel for his defence".

FOURTH. The events leading up to that judgment and com-

[illegible] are as follows:

[i] Upon the affidavit of Virgil L. Young, Jr., Special Agent, Federal Bureau of Investigation, your petitioner "had 'sold' the debt to one William James MacQueen, and that MacQueen attempted to collect the aforesaid debt with the knowledge and consent of" your petitioner [EXHIBIT A(3)];

[ii] Upon this affidavit, on the same day, June 29, 1973, a United States Magistrate issued a warrant to apprehend your petitioner[EXHIBIT A (4)].

[iii] Upon the said warrant and on the same day, your petitioner was arrested and taken before the Honorable Vincent A. Catoggio, United States Magistrate, Eastern District of New York. There petitioner was informed of the charges against him and of his right to retain counsel. Petitioner was released on $10,000 bail and the matter was adjourned first until July 20, 1973, and later at the request of James Dougherty, Special Attorney, Eastern District of New York Task Force, Department of Justice, until August 17, 1973 [EXHIBIT A (5)].

[iv] On August 22, 1973, Indictment No. 73 CR 775, was returned against petitioner and a co-defendant, William James Mac Queen, and the same was transmitted to the clerk of the United States District Court, Eastern District of New York [EXHIBIT A (6)].

[v] On August 24, 1973, notice was mailed that the above case would be called on August 31, 1973 before the Honorable John R. Bartels, United States District Judge, Eastern District of New York [EXHIBIT A (7)].

[vi] Thereafter, petitioner retained as his counsel in the above case one Kenneth W. Salaway, No. 125-10 Queens Boulevard, Queens, N.Y.

[vii] On August 31, 1973, said counsel entered a notice of appearance in the above case [EXHIBIT A (8)].

[viii] On September 14, 1973, a notice of readiness for trial was caused to be mailed to said counsel by Special Attorney James Dougherty [EXHIBIT A (9)].

[ix] Thereafter, the above case was called for trial before the Honorable John R. Bartels, United States District Judge. Said counsel appeared for both the petitioner and the co-defendant, William James Mac Queen. Both the petitioner and said co-defendant, upon the advice of the identical said counsel, entered pleas of guilty [EXHIBIT A (1)].

[x] On April 5, 1974, petitioner was sentenced as indicated (par. FIRST, ante).

FIFTH. Upon information and belief, the indictment against co-defendant Mac Queen was ordered to be dismissed [EXHIBIT B (12)]. Upon information and belief, said Mac Queen was committed for observation and study to the facility at Lewisburg, Pennsylvania [EXHIBIT B (13)]. Upon information and belief, upon his return from that facility he received a suspended sentence of eighteen months.

SIXTH. At the time of the commencement of this proceeding, petitioner was twenty-one years old and single [EXHIBIT A (5)c], and co-defendant Mac Queen was thirty-nine and married [EXHIBIT B (11)e].

SEVENTH. At no time during the proceeding was petitioner aware of the inherent conflict of interest when one lawyer undertakes the defense of more than one co-defendant, nor that the impact of that conflict of interest is so severe as to warrant the conclusion that a co-defendant so circumstanced has been denied the effective assistance of counsel and due process of law.

aware of the prejudice to the just disposition of his case that follows from single counsel representing co-defendants. Upon information and belief presently acquired, that prejudice consists of the following:

[i] A plea of guilty for one co-defendant to a lesser offense with lesser penalty and other consideration may be acceptable to the prosecution only on condition that the other and less culpable co-defendant also plead guilty.

[ii] The very fact of multiple representation makes it impossible to assure either co-defendant that his statements to the lawyer are given in full confidence. This is the case because it is the duty of defense counin preparing for trial or disposition to confront each with any conflicting statement made by the other.

[iii] Defense counsel in the multiple representation situation may be forced to become the judge as to which of his clients is telling the truth, effectively undermining his role as advocate for the client that he does not believe.

NINTH. Actual conflict of interest and resulting prejudice to petitioner occurred in this case. The indictment [EXHIBIT A (6)a] on its face presents such conflict. Of the seven counts that it contains, only three accuse both co-defendants. Count Six accusing petitioner of certain criminal conduct is followed by Count Seven accusing co-defendant Mac Queen of the same conduct in identical words.

TENTH. Further evidence of actual conflict and prejudice resulting to petitioner occurred on the occasion of the making of the guilty pleas by the co-defendants. Mac Queen, on the advice of counsel, entered his plea of guilty first. As petitioner, on the advice of the identical said counsel, was entering his

plea of guilty, Mac Queen rose in the courtroom and exclaimed, "He didn't do anything."

ELEVENTH. Still further evidence of actual conflict and prejudice to petitioner occurred on April 5, 1974 when sentence was imposed. Again Mac Queen rose in the courtroom and again he exculpated petitioner.

TWELFTH. Although petitioner has completed service of his sentence, he continues to suffer adverse consequences because of the judgment of conviction. Upon any subsequent trial for a criminal offense, petitioner's opportunity to be a witness in his own behalf is grossly impaired by such judgment of conviction. Any subsequent conviction of a criminal offense will carry heavier penalty by reason of such judgment of conviction. In addition, the existence of this judgment affects numerous civil rights, employment opportunities and the social standing in the community of the petitioner.

THIRTEENTH. Upon information and belief, no remedy other than this application is presently available for the relief sought by petitioner. Upon information and belief, remedies provided by statute and rules are limited either to prisoners, or to correction and reduction of sentences on the ground of their invalidity rather than to set aside a judgment of conviction.

FOURTEENTH. This application is made as a step in the above-entitled criminal case.

FIFTEENTH. No previous application for the relief sought herein has been made to this Court or any Judge thereof, or to to any other Court or any Judge thereof.

WHEREFORE, your petitioner prays that an order be made and entered in the nature of a writ of error coram nobis vacating the judgment of conviction in the above-entitled proceeding against petitioner, and for such other and different relief as

to the Court may seem just.

Respectfully submitted,

R. A. Mari

RICHARD A. MARI

Address: 360 Etna Street
Brooklyn, N.Y.

STATE OF NEW YORK)
COUNTY OF QUEENS) Ss.:

RICHARD A. MARI, being duly sworn, deposes and says: That he has read the foregoing petition and knows the contents thereof. That the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, he believes it to be true.

/s/ RICHARD A. MARI

Sworn to before me this
___ day of October 1974.

(6)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA

-vs-

WILLIAM JAMES MAC QUEEN
RICHARD A. MARI,

Defendants

----------x

73CR 775

INDICTMENT

18 U.S.C. §§892, 894

THE GRAND JURY CHARGES:

COUNT ONE

1. From on or about May 1, 1973 and continuing thereafter up to and including the date of the filing of this indictment, in the Eastern District of New York, the defendant WILLIAM JAMES MAC QUEEN and the defendant RICHARD A. MARI, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with other persons to the Grand Jury known and unknown to commit certain offenses against the United States, to wit, to violate Title 18, United States Code, Section 894.

2. It was part of said conspiracy that the defendants would knowingly participate in the use of extortionate means to collect and attempt to collect an extension of credit to Joseph Freno, Jr., and to punish said Joseph Freno, Jr. for the nonrepayment thereof.

3. Among the means whereby the said defendants would carry out the conspiracy were the following:

(a) The defendant WILLIAM JAMES MAC QUEEN and the defendant RICHARD A. MARI, would advise Joseph Freno, Jr. that the defendant WILLIAM JAMES MAC QUEEN had purchased Freno's debt from the defendant RICHARD A. MARI and that Freno would be required to make his payments to the defendant WILLIAM JAMES MAC QUEEN.

(b) It was part of said agreement that Freno would be required to repay said debt to the defendant WILLIAM JAMES MAC QUEEN at a rate of $40.00 per week for an indefinite period.

(Title 18, United States Code, Section 894)

On or about May 31, 1973, in the Eastern District of New York, the defendant RICHARD A. MARI, did make an extortionate extension of credit, as defined in Section 891(6), Title 18, United States Code, to Joseph Freno, Jr., as debtor that is, said defendant renewed a loan to Freno in the amount of $1,050.00 with respect to which loan it was the understanding of said defendant - creditor and Joseph Freno, Jr., the debtor, that said loan would be repaid at a rate of $40.00 per week for an indefinite period, and that delay in making repayment and failure to make repayment could result in the use of violence and other criminal means to cause harm to the person, reputation or property of the debtor.

(Title 18, United States Code, Section 892)

COUNT THREE

On or about May 31, 1973, in the Eastern District of New York, the defendant WILLIAM JAMES MAC QUEEN, and the defendant RICHARD A. MARI, knowingly used extortionate means within the meaning of Section 891(7) of Title 18, United States Code, to attempt to collect and to collect from Joseph Freno, Jr., an extension of credit, to wit, the defendants WILLIAM JAMES MAC QUEEN and RICHARD A. MARI expressly and implicitly threatened the use of violence and other criminal means to cause harm to the person, reputation or property of the said Joseph Freno, Jr.

(Title 18, United States Code, Section 894)

COUNT FOUR

On or about June 5, 1973, in the Eastern District of New York, the defendant RICHARD A. MARI, knowingly used extortionate means within the meaning of Section 891(7) of Title 18, United States Code, to attempt to collect and to collect from Joseph Freno, Jr., an extension of credit, to wit, the defendant RICHARD A. MARI expressly and implicitly threatened the use of violence and other criminal means to cause harm to the person, reputation or property of the said Joseph Freno, Jr.

(Title 18, United States Code, Section 894)

COUNT FIVE

On or about June 13, 1973, in the Eastern District of New York, the defendant WILLIAM JAMES MAC QUEEN and the defendant RICHARD A. MARI, knowingly used extortionate means within the meaning of Section 891(7) of Title 18, United States Code, to attempt to collect and to collect from Joseph Freno, Jr., an extension of credit, to wit, the defendants WILLIAM JAMES MAC QUEEN and RICHARD A. MARI, participated in the use of violence and other criminal means to cause harm to

the person, reputation and property of the said Joseph Freno, Jr.

(Title 18, United States Code, Section 894 and Section 2)

COUNT SIX

On or about June 21, 1973, in the Eastern District of New York, the defendant RICHARD A. MARI, knowingly used extortionate means within the meaning of Section 891(7) of Title 18, United States Code, to attempt to collect and to collect from Joseph Freno, Jr., an extension of credit, to wit, the defendant RICHARD A. MARI expressly and implicitly threatened the use of violence and other criminal means to cause harm to the person, reputation or property of the said Joseph Freno, Jr.

(Title 18, United States Code, Section 894)

COUNT SEVEN

On or about June 21, 1973, in the Eastern District of New York, the defendant WILLIAM JAMES MAC QUEEN, knowingly used extortionate means within the meaning of Section 891(7) of Title 18, United States Code, to attempt to collect and to collect from Joseph Freno, Jr., an extension of credit, to wit, the defendant WILLIAM JAMES MAC QUEEN expressly and implicitly threatened the use of violence and other criminal means to cause harm to the person, reputation or property of the said Joseph Freno, Jr.

(Title 18, United States Code, Section 894)

A TRUE BILL

Elliot [signature]

FOREMAN

Robert A. Morse [signature]

ROBERT A. MORSE
UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT

AUG 31 1973

EASTERN DISTRICT OF NEW YORK

TIME A.M.....
P.M.....

NOTICE OF APPEARANCE

UNITED STATES OF AMERICA
Plaintiff

-against-

RICHARD MARI
PLEASE PRINT NAME

William MacQueen

Defendant

DOCKET NUMBER 73 CR 773

DATED: Aug 31

DATE OF ARREST :

PLEASE TAKE NOTICE, that I have been retained by the above, Defendant, above named.

I was admitted to practice in this District on Sept 1969.

SIGNATURE Kenneth W Salaway

Kenneth W SALAWAY
PLEASE PRINT YOUR NAME

OFFICE ADDRESS 125-10 Queens, New York

OFFICE TELEPHONE 793-2700

(If Defendant's Attorney is a Law Firm, indicate member thereof who is to try this case and whose professional engagements are to be considered in any application for adjournment.)

TO: U.S. ATTORNEY
Original filed in Clerk's Office

LEWIS ORGEL
CLERK

By: [illegible]
Deputy Clerk

DATE: 8/31/73

Rev. 9/30/66

JUDGMENT AND COMMITMENT (Rev. 2-68) (1) Cr. Form No 25

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

APR 5 1974

United States of America

v.

RICHARD A. MARI

No. 73 CR 775

TIME A.M.....
P.M.....

On this 5th day of APRIL, 19 74 came the attorney for the government and the defendant appeared in person and with counsel

IT IS ADJUDGED that the defendant upon his plea of guilty and the court being satisfied that there is a factual basis for the plea has been convicted of the offense of violating T-18, U.S.C. Sec. 892, in that on or about May 31, 1973, the defendant, did make an extortionate extension of credit, as defined in T-18, U.S.C. Sec. 891(6), to Joseph Freno Jr., as debtor that is, said defendant renewed a loan to Freno in the amount of $1,050.00 with respect to which loan it was the understanding that said defendant-creditor and said debtor, that said loan would be repaid, and that delay in making repayment and failure to make repayment could result in the use of violence and other criminal means to cause harm to the person, reputation or property of the debtor

as charged in Count 2

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 3 years on count 2 pursuant to T-18, U.S.Code, Sec. 3651 - defendant shall be confined for a period of 4 months - execution of remainder of sentence is suspended and the defendant is placed on probation for a period of 2 years and 8 months subject to the standard conditions of probation as set forth in the standing order of this court dated Oct. 13, 1964. On motion of Asst. U.S.Attorney Dougherty the remaining counts are dismissed. Defendant is to surrender April 15, 1974. Bail continued.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

James C. Bartlett

United States District Judge.

The Court recommends commitment to "

Clerk.

[1] Insert "by [name of counsel], counsel" or "without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2] Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3] Insert "in count(s) number " if required. [4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5] Enter any order with respect to suspension and probation. [6] For use of Court to recommend a particular institution.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- -x

THE UNITED STATES OF AMERICA, :

Appellee, : AFFIDAVIT

-vs- :

RICHARD MARI, :

Defendant-Appellant. :

- -x

STATE OF NEW YORK)
COUNTY OF QUEENS) ss.:

HARRIET NOVET, being sworn, deposes and says:

That she is an employe of PATRICK BRODERICK, ESQ., over the age of eighteen years, residing at Queens, New York, and not a party to this action.

On August 28, 1975, deponent served the within BRIEF AND APPENDIX upon

RICHARD D. ROMERO, ESQ.,
Department of Justice
P. O. Box 899
Ben Franklin Station
Washington, D. C.

attorney for Appellee herein, at the address designated by said attorney for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York

SWORN to before me this
28th day of August, 1975

Harriet Novet
HARRIET NOVET

Peter C. F. Broderick
NOTARY PUBLIC

PATRICK F. BRODERICK
NOTARY PUBLIC, State of New York
No. 5
Qualified in Queens County
Commission Expires March 30, 1976